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EXAMINER				
VAN HANDEL, MICHAEL P				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/026,835

Applicant(s)

BEST ET AL.

Examiner

MICHAEL VAN HANDEL

Art Unit

2424

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 48-53, 58-63 and 68-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 48-53, 58-63, 68-73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/20/2010 has been entered.

Response to Amendment

2. This action is responsive to an Amendment filed 8/20/2010. Claims **48-53, 58-63, 68-73** are pending. Claims **48, 58, 62, 68, 72** are amended. Claims **1-47, 54-57, 64-67, 74-77** are canceled. The examiner hereby withdraws the rejection of claim **72** under 35 USC 112, first paragraph, in light of the amendment.

Response to Arguments

3. Applicant's arguments regarding claim **68**, filed 8/20/2010, have been considered, but are moot in view of the new ground(s) of rejection.

4. Applicant's arguments regarding claims **48** and **58**, filed 8/20/2010, have been fully considered, but they are not persuasive.

Regarding claims **48** and **58**, the applicant argues that Gutta et al. I does not disclose determining, by the computer, that two or more conflicting actions are to be taken based on the

presence indicator signal and a source of the presence indicator signal and retrieving a conflict resolution rule to determine which of the two or more conflicting actions predominates. The examiner respectfully disagrees. The applicant specifically argues that Gutta et al. I will not encounter two or more conflicting actions, because Gutta et al. I creates a composite user profile and combinatorial preferences are defined that handle preferences of a user in light of other users who may be present. Despite creating a composite profile, Gutta et al. I discloses that, when multiple users with different preferences are present, some of the users' preferences are acted on while others are not. Gutta I et al. uses an example of a father and a daughter watching television together. The father may enjoy entertainment options involving cooking which the daughter hates and the daughter may enjoy entertainment options involving music which the father does not. If the father's preferences are weighted more heavily than the daughter, a cook-off broadcast may get recommended even though it would not be recommended for the daughter if she were watching alone (p. 3, paragraph 30). That is, if the daughter was watching television alone a music program would be recommended. If the father was watching television alone a cook-off would be recommended. Since they do not enjoy the same type of programming, there is a conflict when they are watching television together. Since the father's preferences are weighted more heavily, a cook-off broadcast is recommended while a music broadcast is not. Gutta et al. I provides an additional example in which a mother and her three year old child are watching television together. In this scenario, only entertainment options that are highly recommended by the three year old's profile would be displayed even though those entertainment options are not highly rated for the mother (p. 3, paragraph 31). Here again, certain programs that would be recommended for the mother when watching television alone

would not be recommended when watching television with the child. As such, the examiner maintains that Gutta et al. I meets the limitations of determining, by the computer, that two or more conflicting actions are to be taken based on the presence indicator signal and a source of the presence indicator signal and retrieving a conflict resolution rule to determine which of the two or more conflicting actions predominates, as currently claimed.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims **68-73** are rejected under 35 U.S.C. 101, because the claimed invention is directed to non-statutory subject matter.

Referring to claims **68-73**, the claims are directed towards a computer readable medium; however, the examiner notes that the specification is unclear as to what the medium is. Paragraph 49 of the published version of Applicant's specification (US 2005/0034147) states that the computer-readable medium can be a device that stores digital information, but does not state that the medium is not a signal. As such, the computer readable medium can be construed to be a signal. The examiner notes that a claim directed to a signal *per se* does not appear to be a process, machine, manufacture, or composition of matter. The examiner recommends that Applicant amend the claim to recite a "non-transitory" computer readable media. See **MPEP 2106.01** for guidance.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims **48, 52, 53, 58, 61-63** are rejected under 35 U.S.C. 102(e) as being anticipated by Gutta et al. (Gutta et al. I hereinafter)(US 2002/0194586)(of record).

Referring to claim **48**, Gutta et al. I discloses a method, comprising:

- detecting a user in the vicinity of a television (p. 2, paragraph 17; p. 3, paragraph 34; & Figs. 1, 2);
- sending a presence indicator signal from a presence detector to a computer (p. 2, paragraphs 19, 20 & p. 3, paragraph 34);
- determining, by the computer, that two or more conflicting actions are to be taken based on the presence indicator signal and a source of the presence indicator signal (different user profiles are associated with each user in the vicinity and may contain conflicting recommendations)(p. 2, paragraph 21 & p. 3, paragraphs 30-32);
- retrieving a conflict resolution rule to determine which of the two or more conflicting actions predominates (preferences of the different users may be weighted differently or weighted differently based on time of day)(p. 3, paragraphs 29-32); and
- sending a predominate action to the television (p. 3, paragraphs 27, 29-32).

Referring to claim 52, Gutta et al. I discloses the method according to claim 48, further comprising selecting a predominate user associated with at least one of the conflicting actions (p. 3, paragraphs 29-32).

Referring to claim 53, Gutta et al. I discloses the method according to claim 48, further comprising powering the television (p. 3, paragraph 33).

Referring to claim 58, Gutta et al. I discloses a system, comprising:

- a processor executing instructions stored in memory (Fig. 1) that cause the processor to:
 - o detect multiple users in the vicinity of a television (p. 2, paragraph 17; p. 3, paragraph 34; & Figs. 1, 2);
 - o send multiple presence indicator signals from a presence detector to a computer, with each presence indicator signal identifying a user's identity (p. 2, paragraphs 19, 20 & p. 3, paragraph 34);
 - o determine that two or more conflicting actions to be taken based on each user's identity and on a source of each presence indicator signal (different user profiles are associated with each user in the vicinity and may contain conflicting recommendations)(p. 2, paragraph 21 & p. 3, paragraphs 30-32);
 - o retrieve a conflict resolution rule that specifies which user's identity predominates over other users' identities (preferences of the different users may be weighted differently or weighted differently based on time of day)(p. 3, paragraphs 29-32);

- select a predominate action associated with a predominate user's identity (p. 3, paragraphs 27, 29-32); and
- send the predominate action to the television (p. 3, paragraphs 27, 29-32).

Referring to claim **61**, Gutta et al. I discloses the system according to claim 58, wherein the instructions further cause the processor to query to determine which of the conflicting actions are to be taken (p. 3, paragraphs 27, 29-32).

Referring to claim **62**, Gutta et al. I discloses the system according to claim 61, wherein the instructions further cause the processor to receive a response to the query (p. 3, paragraphs 27, 29-32).

Referring to claim **63**, Gutta et al. I discloses the system according to claim 58, wherein the instructions further cause the processor to set a timer (p. 3, paragraph 33).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims **49, 50, 59, 60** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutta et al. I in view of Gutta et al. (Gutta et al. II hereinafter)(US 2002/0144259)(of record).

Referring to claims **49, 50, 59, and 60**, Gutta et al. I discloses the method/system according to claims 48 and 58. Gutta et al. I further discloses displaying television program recommendations based on user profiles (p. 3, paragraphs 27, 29-30). Gutta et al. I does not

specifically disclose changing a channel associated with the television or changing a volume associated with the television. Gutta et al. II discloses an apparatus for monitoring for users in the vicinity of a media player and automatically controlling the media player in response to predefined events (p. 1, paragraph 5). Like in Gutta et al. I, Gutta et al. II discloses storing a number of user profiles containing different user preferences (p. 2, paragraph 19 & Fig. 2). These preferences can include muting, adjusting the volume, and changing the program channel (p. 1, paragraph 15). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the preferences in the user profiles of Gutta et al. I to include muting, adjusting the volume, or changing the program channel, such as that taught by Gutta et al. II in order to allow a user to conveniently adjust one or more settings in a desired manner (Gutta et al. II p. 1, paragraph 3).

11. Claim **51** is rejected under 35 U.S.C. 103(a) as being unpatentable over Gutta I et al. in view of Gutta II et al., and further in view of Robbins.

Referring to claim **51**, Gutta et al. I discloses the method according to claim 48. Gutta et al. I further discloses displaying television program recommendations based on user profiles (p. 3, paragraphs 27, 29-30). Gutta et al. I does not specifically disclose retrieving weather and traffic information. Gutta et al. II discloses an apparatus for monitoring for users in the vicinity of a media player and automatically controlling the media player in response to predefined events (p. 1, paragraph 5). Like in Gutta et al. I, Gutta et al. II discloses storing a number of user profiles containing different user preferences (p. 2, paragraph 19 & Fig. 2). These preferences can include changing the program channel (p. 1, paragraph 15). It would have been obvious to

one of ordinary skill in the art at the time that the invention was made to modify the preferences in the user profiles of Gutta et al. I to include changing the program channel, such as that taught by Gutta et al. II in order to allow a user to conveniently adjust one or more settings in a desired manner (Gutta et al. II p. 1, paragraph 3).

The combination of Gutta et al. I and Gutta et al. II does not specifically teach tuning to weather and traffic information. Robbins discloses an automatic tuning system for automatically tuning to a predetermined program (col. 3, l. 61-65). A user programs the television receiver to automatically tune to the channel at the appropriate time (col. 5, l. 42-50). Robbins further discloses that the channel can be tuned when displaying traffic and weather portions of a newscast (col. 5, l. 50-61). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the combination of Gutta et al. I and Gutta et al. II to include automatically tuning to a channel displaying traffic and weather portions of a newscast, such as that taught by Robbins in order to allow easy user programming for automatically tuning to a broadcast of a specific program (Robbins col. 3, l. 52-55).

12. Claim 68 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gutta I et al. in view of Sankaranarayan et al.

Referring to claim 68, Gutta I et al. discloses a computer readable medium storing processor executable instructions for performing a method, the method comprising:

- detecting multiple users in the vicinity of a television (p. 2, paragraph 17; p. 3, paragraph 34; & Figs. 1, 2);

- sending multiple presence indicator signals from a presence detector to a computer, with each presence indicator signal identifying a user's identity (p. 2, paragraphs 19, 20 & p. 3, paragraph 34);
- determining two or more conflicting actions are to be taken based on each user's identity and on a source of each presence indicator signal (different user profiles are associated with each user in the vicinity and may contain conflicting recommendations)(p. 2, paragraph 21 & p. 3, paragraphs 30-32);
- selecting a predominate action to resolve the two or more conflicting actions (preferences of the different users may be weighted differently or weighted differently based on time of day)(p. 3, paragraphs 29-32); and
- sending the predominate action to the television (p. 3, paragraphs 27, 29-32).

Gutta I et al. further discloses recommending programs for tuning based on user's preferences and weighting different user's preferences differently. For example, if a daughter and father are watching TV and the daughter likes music programs, while the father does not, and the father likes cook-off broadcasts, while the daughter does not, the system may recommend the cook-off broadcast anyway if the father's preferences are more heavily weighted (p. 3, paragraph 30).

Gutta I et al. does not specifically disclose determining which of the two or more conflicting actions was first triggered and selecting a first triggered action as a predominate action to resolve the two or more conflicting actions. Sankaranarayan et al. discloses a resource manager architecture for use in a TV-enabled computer system to manage tuner resources (col. 4, l. 54-67 & col. 5, l. 1-3, 49-55). Sankaranarayan et al. further discloses a situation where two activities wish to use one tuner. If newly received activity request does not have a higher priority than an

already received activity request for the tuner, it is rejected, because a single tuner cannot support both activities (col. 16, l. 21-55). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Gutta I et al. to include resolving two conflicting actions in favor of the one first received, such as that taught by Sankaranarayan et al. in order to provide a better technique for managing resources and their allocation to different users (Sankaranarayan et al. col. 2, l. 1-3).

13. Claims **69-72** are rejected under 35 U.S.C. 103(a) as being unpatentable over Gutta I et al. in view of Sankaranarayan et al., and further in view of Gutta II et al.

Referring to claims **69** and **70**, the combination of Gutta I et al. and Sankaranarayan et al. teaches the computer readable medium of claim 68. The combination of Gutta I et al. and Sankaranarayan et al. further teaches displaying television program recommendations based on user profiles (p. 3, paragraphs 27, 29-30). The combination of Gutta I et al. and Sankaranarayan et al. does not specifically teach changing a channel associated with the television or changing a volume associated with the television. Gutta II et al. discloses an apparatus for monitoring for users in the vicinity of a media player and automatically controlling the media player in response to predefined events (p. 1, paragraph 5). Like in Gutta et al. I, Gutta et al. II discloses storing a number of user profiles containing different user preferences (p. 2, paragraph 19 & Fig. 2). These preferences can include muting, adjusting the volume, and changing the program channel (p. 1, paragraph 15). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the preferences in the user profiles in the combination of Gutta et al. I and Sankaranarayan et al. to include muting, adjusting the volume, or changing the

program channel, such as that taught by Gutta et al. II in order to allow a user to conveniently adjust one or more settings in a desired manner (Gutta et al. II p. 1, paragraph 3).

Referring to claims **71** and **72**, the combination of Gutta I et al., Sankaranarayan et al., and Gutta II et al. teaches the computer readable media according to claim 69, further comprising instructions for querying to determine which of the conflicting actions are to be taken and for receiving a response to the query (Gutta et al. I p. 3, paragraphs 27, 29-32).

14. Claim **73** is rejected under 35 U.S.C. 103(a) as being unpatentable over Gutta et al. I in view of Sankaranarayan et al.

Referring to claim **73**, the combination of Gutta et al. I and Sankaranarayan et al. teaches the computer readable media according to claim 68, further comprising instructions for powering the television (Gutta et al. I p. 3, paragraph 33). The combination of Gutta et al. I and Sankaranarayan et al. further teaches that the entertainment system is used for audio-visual entertainment as well as audio entertainment (Gutta et al. I p. 1, paragraph 16). The combination of Gutta et al. I and Sankaranarayan et al. does not specifically teach that the television has stereo audio. Applicant's failure to adequately traverse the Examiner's taking of Official Notice (that it is notoriously well-known within the prior art to include stereo audio with a television) in the last Office Action is taken as an admission of the fact(s) noticed. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify the audio output of the television of Gutta et al. I in the combination of Gutta et al. I and Sankaranarayan et al. to include stereo audio, such as that taught by the admitted prior art in order to provide the user with a better and more realistic sounding television experience.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL VAN HANDEL whose telephone number is (571)272-5968. The examiner can normally be reached on 8:00am-5:30pm Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Van Handel/
Primary Examiner, Art Unit 2424

9/20/2010